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W.P. No.40879 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.40879 of 2015

K.M.Venkatesh

... Petitioner

Vs.

1.The Government of Tamil Nadu
Rep. by its Secretary to Government
Rural Development & Panchayat Raj Department,
Fort St.George, Chennai 600 009.

2.The Director of Rural Development
Panagal Building
Saidapet, Chennai 600 015.

3.The District Collector (PD Section)
Erode District, Erode.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to G.O.(1D) No.169 Rural Development and Panchayat (E7) Department dated 23.03.2015 of the 1st respondent and the consequential order of the third respondent bearing Q.No.19444/2015/PA2 dated 12.08.2015 and quash the same in so far it relates to declaration of probation in the cadre of probation in the cadre of Junior Assistant from 31.05.2014 and further direct the respondents to declare successful



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completion of probation of petitioner in the cadre of Junior Assistant from 28.12.2010 with all consequential benefits such as refixation of pay, arrears of pay etc.

For Petitioner : Mr.K.S.Viswanathan
Senior Counsel for Mr.T.Hemalatha

For R1 to R3 : Mr.Vadivelu Deenadayalan
Additional Government Pleader.

ORDER

The brief facts that are relevant for disposal of the writ petition are as under:

The petitioner herein was appointed as Junior Assistant on 21.09.2007 in Rural Development Department in Erode District on compassionate ground consequent upon the death of his father Late D.Murugesan, who died in harness, while working in the cadre of Extension Officer in Perunthurai Panchayat Union on 07.03.2001. It was thereafter, the petitioner passed all the departmental examinations prescribed for the post of Junior Assistant on 28.12.2010. In the meanwhile, the 3rd respondent forwarded the relevant papers pertaining to the petitioner for regularization of his services to the Government and the respondent Government through G.O.(3D).No.158, Rural Development and Panchayat (E3) Department, dated 11.11.2013



regularizing the service of the petitioner in the cadre of Junior Assistant with effect from 21.09.2007.

2. It was thereafter, the petitioner was sent for completing the foundation training course in Government Training Institute at Bhavani Sagar from 23.12.2013 to 13.02.2014. Accordingly, the petitioner undergone the training, however could not clear one of the papers namely, paper relating to service establishment and thereafter, completed the said paper in the examination that was held on 31.05.2014. It was thereafter, the Government issued G.O.(1D).No.169, Rural Development and Panchayat (E7) Department, dated 23.03.2015, declaring the probation of the petitioner in the cadre of Junior Assistant with effect from 31.05.2014 i.e., the date on which the petitioner cleared all the papers in foundation training course. It is aggrieved by the said Government order dated 23.03.2015, to the extent the probation was declared with effect from 31.05.2014 instead of 28.12.2010 i.e., the date on which the petitioner passed all the departmental examinations, the petitioner approached this Court by filing the present writ petition.



3. Heard Mr.K.S.Viswanathan, learned Senior Counsel for the petitioner and Mr.Vadivelu Deenadayalan, learned Additional Government Pleader for the respondents.

4. The respondents filed a counter affidavit contending that in terms of Rule 34 (a) of Tamil Nadu Ministerial Service Rules, a person appointed to the service whether by direct recruitment or by any other means should pass prescribed departmental tests and complete the training prescribed within a period of two years. In case, if the petitioner had passed all the papers during the foundation training course on first attempt itself, the Government would have declared his probation with effect from 28.12.2010 i.e., the date on which the petitioner completed the prescribed departmental examinations. But because of the failure of the petitioner in passing all the papers, the probation of the petitioner was declared with effect from 31.05.2014 i.e., the date on which the petitioner cleared all the papers in foundation training course. Thus, it is contended that the probation of the petitioner was declared by relaxing General Rules 26 & 28 of Tamil Nadu State and Subordinate Service Rules and Rule 34 (a) of Tamil Nadu Ministerial Service Rules with effect from 31.05.2014 by issuing the impugned Government order.



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5. It is a settled legal position that, in all cases where the requirement of undergoing a training course or completing service in a particular post is prescribed as a qualification for being appointed to any particular post or for extending any service benefit, the failure to complete such training or service cannot be put against an employee, as it is not in his hands to complete the said training or service. An employee can complete such service or training only on being sent by the employer, which depends upon various circumstances, such as the availability of infrastructure for imparting such training, vacancy in the post, etc. It is an undisputed fact that the acquisition of such a qualification of undergoing a training or completing service in a particular post, is not in the hands of the employee, but it depends upon the employer.

6. In the instant case, though the petitioner was appointed on compassionate ground as early as on 21.09.2007 and passed all the departmental examinations on 28.12.2010, the respondents regularized the services of the petitioner only on 11.11.2013, and it is only thereafter, the



petitioner was sent for foundation training course at Bhavani Sagar and eventually he completed the said course on 31.05.2014. Under no circumstances, the petitioner can be held to be responsible for the delay in regularization of his services till 11.11.2013 or for the delay in sending him for foundation training course. The petitioner has completed the said training on 13.02.2014, and cleared all the departmental examinations on 31.05.2014 i.e., within a period of three months after completing the said training course.

7. Admittedly, the petitioner was not sent for foundation training course within two years from the date of his initial appointment and he was sent for such training only in the year 2013 i.e., after a lapse of six years since the date of his initial appointment. It is not understandable as to why the petitioner is not entitled for declaration of his probation with effect from 28.12.2010, when it is the stand of the respondents that his probation could have been declared from that date, had he completed all the papers at the first instance after completing the training course. It is solely on the ground that the petitioner has completed one of the papers in foundation training course in 2nd attempt on 31.05.2014, his probation was declared from that date. Absolutely, this Court is unable to see any justification for such a stand.



Whether the petitioner completed the training course on 13.02.2014 or 31.05.2014 hardly makes any difference, as both the dates would fall beyond the period of two years within which the petitioner is otherwise supposed to pass all the tests and complete all the training in terms of Rule 34 (a) of the Tamil Nadu Ministerial Service Rules. There is nothing indicated in the counter affidavit to justify the said stand of the respondents.

8. In the considered view of this Court, absolutely there cannot be any discrimination on the mere ground that the petitioner has completed training course on 31.05.2014 instead of 13.02.2014. If the petitioner is entitled for declaration of his probation with effect from 28.12.2010 had he completed the training course on 13.02.2014 and passed all the papers, under no circumstances, it can be said that the petitioner is not entitled for such benefit solely on the ground that he passed one of the papers pertaining to training course on 31.05.2014. As the reason assigned by the respondents for depriving the petitioner for the benefit of declaration of his probation from 28.12.2010 is totally unreasonable, arbitrary and does not stand to any reason, in the considered view of this Court, the impugned order to the extent of declaring the probation of the petitioner with effect from 31.05.2014 is



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liable to be declared as illegal and arbitrary.

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9. Be that as it may, the very same issue has fallen for consideration before different coordinate benches of this Court and almost, all the learned Judges have concluded that, completing the foundation training course belatedly cannot be a ground to deprive the employees, of the other service benefits for which they are otherwise entitled to under law. In this connection, the learned counsel for the petitioner rightly placed reliance on various decisions of coordinate benches of this Court in W.P.Nos.6391 of 2019 and 13563 of 2022, and also on a decision of learned Division Benches of this Court in W.A.No.248 of 2022 dated 15.02.2022 and W.A.(MD).Nos.597 to 599 of 2022 dated 02.02.2024. This Court, has carefully perused the said orders and, is convinced that the said orders have direct application to the case on hand. The facts of the case in W.A.No.248 of 2022 are also identical to the case on hand.

10. However, Mr.Vadivelu Deenadayalan, learned Additional Government Pleader placed reliance on a decision of the learned Division Bench of Madurai Bench of this Court in W.A.(MD).No.756 of 2021 dated

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15.04.2024 and contended that, an identical issue came for consideration before the learned Division Bench and the learned Division Bench, by the said order, allowed the writ appeal setting aside an order passed by the learned Single Judge taking a contrary view holding that the Rule 32 (a) (i) of the Tamil Nadu Ministerial Service Rules has application only to the persons appointed by direct recruitment, but not to the persons appointed on compassionate grounds. The learned Division Bench, in the said decision having held that, Rule 32(a)(i) of the Tamil Nadu Ministerial Service Rules has no application to persons who are appointed on compassionate grounds, placed reliance on Fundamental Rule 26 (a) (2) of the Tamil Nadu Fundamental Rules and held that, the person who failed to complete the foundation training course in one attempt cannot claim for declaration of his probation, and he is entitled for declaration of his probation only from the date on which he completed the said training course.

11. Confronted with the said decisions of the learned Division Bench, Mr.K.S.Viswanathan, learned counsel for the petitioner contended that the learned Division Bench in W.A.(MD).No.756 of 2021 has not taken note of the decision of the previous Division Bench in W.A.No.248 of 2022 dated



15.02.2022, and contended that had the said decisions were brought to the notice of the subsequent Division Bench, the learned Division Bench ought not have arrived at such a conclusion. He also further submitted that the decisions in W.A.No.248 of 2022 has precedent over the decision in W.A.(MD).No.756 of 2021. And in support of his contention, he also placed reliance on the decision of the Hon'ble Apex Court in the case of ***Union Territory of Ladakh Vs Jammu and Kashmir National Conference*** reported in 2023 SCC Online SC 1140. In the said decision, the Hon'ble Apex Court at paragraph 35 held as under:

“35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge



Bench in National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 680. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.”

12. From the above it is evident that, in case of conflicting judgments by benches of equal strength of the Hon'ble Apex Court, it was directed that the decisions of the earlier bench is to be followed by the Apex Court, as held by the Constitution Bench in ***National Insurance Company Limited v. Pranay Sethi*** reported in ***(2017) 16 SCC 6805***. The ratio of the above decision would equally applicable in the matter of conflict between the two Division Benches of this Court as well. The decision rendered in W.A.No.248 of 2022, dated 15.02.2022, is an earlier decision rendered by the learned Division Bench of this Court, and the subsequent decision in W.A.(MD).No.756 of 2021 dated 15.04.2024 was rendered without taking note of the decision of the earlier Division Bench in W.A.No.248 of 2022 dated 15.04.2022.

13. Further, this Court has also gone through the orders passed by both the Division Benches and the decision in W.A.No.248 of 2022, and has



carefully considered the issue in elaborate. In the considered view of this Court, Rule 26 of the Tamil Nadu Fundamental Rules has nothing to do with the declaration of probation, and the declaration of probation is solely governed by Rule 32 of the Tamil Nadu Ministerial Service Rules. Except the said Rule, there is no other Rule that would govern the declaration of probation, of any Government servant, whether appointed by direct recruitment or by other modes including compassionate appointment.

14. In the light of the above, this Court is also in respectful agreement with the decision in W.A.No.248 of 2022, dated 15.02.2022, wherein it was held as under:

“10. On reading of the above order, it is apparent that this Court is not inclined to accept the contention of the learned counsel for the Appellants that Rule 32(a)(i) of the Tamil Nadu Ministerial Service Rules will not be applicable. Even assuming for the sake of agreement, the said Rule is not applicable as per Tamil Nadu Government Servants (Conditions of Service) Act, 2016 and the maximum period of probation is for a period of Five years as rightly held by the learned Single Judge, there is no fault on the part of the Writ petitioner in completing the training belatedly and the delay is only on the part of the Appellants herein in deputing the Writ Petitioner for the Foundational Training belatedly.”



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15. In normal course, this Court, having noticed direct conflict between the two decisions rendered by the learned Division Benches, would have referred the matter to a larger Bench, but in the light of the decisions of the Hon'ble Apex Court in the cases of *Union Territory of Ladakh Vs Jammu and Kashmir National Conference* reported in *2023 SCC Online SC 1140* and *National Insurance Company Limited v. Pranay Sethi* reported in *(2017) 16 SCC 680* does not deem it necessary to refer the matter to the larger Bench, and is of the considered view that it is appropriate for this Court to follow earlier decision rendered in W.A.No.248 of 2022 dated 15.02.2022 as against the decision in W.A.(MD).No.756 of 2021 dated 15.04.2024.

16. In the light of the above, the impugned order to the extent of declaring probation of the petitioner with effect from 31.05.2014 is liable to be declared as illegal, arbitrary and violative of Article 15 and 16 of the Constitution of India and the same is accordingly declared as such. Consequently, the respondents are directed to declare the probation of the



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petitioner with effect from 28.12.2010 i.e, the date on which the petitioner has passed all the departmental examinations and the necessary orders in this regard shall be issued, as expeditiously as possible, at any rate, within a period of two (2) months from the date of receipt of a copy of this order.

17. Accordingly, the writ petition is allowed. The connected miscellaneous petitions, if any, shall stand closed. No costs.

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Index : Yes/No
Speaking Order : Yes/No
dpa

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